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**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/160756

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 19, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on November 13, 2014, at Racine, Wisconsin.

The issue for determination is whether Petitioner has submitted evidence sufficient to demonstrate that a denial of personal care worker (PCW) hours to be paid for by the Medicaid program may be reversed.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Kelly Townsend, RN  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Racine County.
2. A prior authorization (PA) request seeking Medicaid payment for 24.5 hours (or 98 units with each unit = 15 minutes) per week of personal care services [and 28 units or 7 hours for PCW travel time]

was filed on behalf of Petitioner on or about July 16, 2014. The total cost was noted to be \$21,052.74. The requesting provider is Advocate Home Health. The request was for 53 weeks.

3. The provider completed two personal care screening tools (PCST) on June 18, 2014. The initial screen concluded that Petitioner required 10.25 hours per week of personal cares and the second that 24.25 hours per week were required. The provider submitted that second with the PA; the difference between the two was that the second indicated that assistance was need with toileting 3 times per day and that first that such assistance was not required.
4. Petitioner is 70 years of age ( [REDACTED] ). The diagnosis on the PA indicates osteoarthritis as the primary diagnosis. Petitioner is also noted to have or have had the following medical issues: compression fracture of back, spondylolisthesis, lumbar radiculopathy and bilateral knee replacements. She does use a shower chair, high rise toilet seat, scooter and walker.
5. Petitioner lives in the community with her granddaughter.
6. This PA for PCW services was denied completely by the Department. The Department did concluded that Petitioner is independent in her ADLs but might benefit from additional therapy as well as additional adaptive equipment such as a shower chair and adaptive methods of completing tasks, e.g., sitting while dressing and grooming.

### DISCUSSION

When determining whether to approve any medical service, the OIG must consider the generic prior authorization review criteria listed at *Wis. Admin. Code, § DHS 107.02(3) (e)*:

(e) *Departmental review criteria.* In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
  1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
  2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;

3. Is appropriate with regard to generally accepted standards of medical practice;
4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
6. Is not duplicative with respect to other services being provided to the recipient;
7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

*Wis. Admin. Code, §DHS 101.03(96m).*

Also, the following Administrative Code provision is relevant here:

**DHS 107.112 Personal care services. (1) COVERED SERVICES.** (a) Personal care services are medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care. The personal care worker shall be assigned by the supervising registered nurse to specific recipients to do specific tasks for those recipients for which the personal care worker has been trained. The personal care worker's training for these specific tasks shall be assured by the supervising registered nurse. The personal care worker is limited to performing only those tasks and services as assigned for each recipient and for which he or she has been specifically trained.

(b) Covered personal care services are:

1. Assistance with bathing;
2. Assistance with getting in and out of bed;
3. Teeth, mouth, denture and hair care;
4. Assistance with mobility and ambulation including use of walker, cane or crutches;
5. Changing the recipient's bed and laundering the bed linens and the recipient's personal clothing;
6. Skin care excluding wound care;
7. Care of eyeglasses and hearing aids;
8. Assistance with dressing and undressing;
9. Toileting, including use and care of bedpan, urinal, commode or toilet;
10. Light cleaning in essential areas of the home used during personal care service activities;
11. Meal preparation, food purchasing and meal serving;
12. Simple transfers including bed to chair or wheelchair and reverse; and
13. Accompanying the recipient to obtain medical diagnosis and treatment.

*Wis. Admin. Code, §DHS 107.112(1)(a) and (b).*

I note at this point that the Petitioner has the burden of proving that the requested therapy meets the approval criteria and that the standard level of proof applicable is a "preponderance of the evidence". This legal standard of review means, simply, that "it is more likely than not" that Petitioner and/or his/her representatives have demonstrated that the requested services meet the criteria necessary for payment by the Wisconsin Medicaid program. It is the lowest legal standard in use in courts or tribunals.

The Department provided a letter (Ex # 3) that detailed its rationale for modifying this request for personal care services. It need not be reproduced here. It noted the two different PCSTs performed on the same day. The Department reviewed clinical notes from physician visits and from physical and

occupational therapy. Those references indicated that Petitioner needs to improve strength but she did place her PT on hold because of pain in her legs. OT notes indicated that Petitioner progressed to independence in her transfers and was independently mobile with her walker. The Department suggested that Petitioner check with a local durable medical equipment dealer for additional adaptive equipment.

Evidence offered by and/or on behalf Petitioner did not contradict the Department conclusion. Much of the time she is independent. Though she does have days where ADLs are more of a problem, Petitioner's evidence does not demonstrate that she qualifies for personal care worker services.

Finally, I note that Petitioner may want to explore other programs for assistance, especially the Family Care program and the Include, Respect, I Self Direct (IRIS) program. The starting point for learning more about these programs is to contact the Aging & Disability Resource Center (ADRC) of Racine County:

262-833-8777  
866-219-1043 Toll Free  
WI Relay 711  
Email: [adrc@goracine.org](mailto:adrc@goracine.org)

If circumstances change, Petitioner may again have this or any other qualified provider submit a new prior authorization request.

**NOTE: The provider will not receive a copy of this Decision. In order to have the personal care services involved here approved, the Petitioner must provide a copy of this Decision to the provider. The provider must then submit a new prior authorization request to receive the approved coverage.**

### **CONCLUSIONS OF LAW**

That the evidence offered on behalf of Petitioner is not sufficient to demonstrate that the PCW services requested here meet the standards necessary for Medicaid payment.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

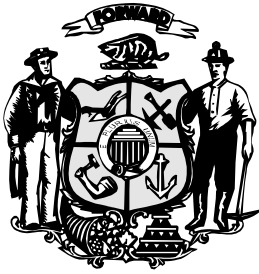
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 15th day of December, 2014

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on December 15, 2014.

Division of Health Care Access and Accountability